

CORRECTED VERSION

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne — 4 October 2004

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Mr R. Sonogan, Victorian Manager, Ready Workforce, Chandler Macleod Group.

The CHAIR — I welcome Mr Rob Sonogan, the Victorian manager of Ready Workforce, a labour hire firm.

Mr SONOGAN — That is correct.

The CHAIR — Excellent! We welcome you to our committee. As you are aware, the Economic Development Committee is undertaking an inquiry into labour hire employment in Victoria. You have probably seen the terms of reference — they go on for a great long whopping page, so I am not going to read them all out to you. We are one of 11 parliamentary committees of the state Parliament and there is all-party representation on the committee. We have been asked to present a report back to the Parliament by the end of the year. This is a formal public hearing. We have had a number of public hearings during the course of this year, and as such your comments are being recorded by Hansard. We will make a copy of that transcript available to you in a couple of weeks time. Because it is a formal hearing anything you say will be covered by parliamentary privilege, but that does not extend outside the precincts of the hearing. Any submission you would like to make in written form that complements what you say today, the committee reserves the right to make it a public submission and make it publicly available at some point in the future, subject to discussion with you. The way we have handled this to date is to let our witnesses have a few minutes making comment, and then we take questions and answers. I think you are here as a consequence of being mentioned in the National Union of Workers report?

Mr SONOGAN — In relation to George Weston Foods and the NUW.

The CHAIR — We were keen to make sure that those people who were mentioned had a right of reply, so that is why you are here today. Off you go!

Mr SONOGAN — Thank you. Ready Workforce is a blue-collar division of the Chandler Macleod Group. The company has been in operation for 40 years, the Ready Workforce component for the last seven. As such we have separate divisions for separate categories. We have a white-collar division, a blue-collar division and an executive division, as well as a training division.

I am the Victorian manager for the blue-collar division — namely Ready Workforce. We operate from three locations in Melbourne — that is, Altona, Dandenong and Preston — and as such employ casual labour. We supply to various clients and industries. Seventy per cent of our supply is in the food industry, with the remainder making up into the transport industry and mainly logistics-type arrangements as well.

In reference to this case, yes, George Weston Foods is a national client of the Chandler Macleod Group. We not only supply labour hire but also some HR services for permanent employment opportunities. So it is not just labour hire supply; it is the full HR service that we supply to the client. In many cases that is the same with other clients, Burns Philp being another large food operator that we deal with, and we supply full HR services to it too.

In this particular case in Tottenham there was a site that was due to close in February, and as such we went through the appropriate notification period only to be informed by the site that the NUW had signed over the casuals from the Transport Workers Union to the NUW, and that they were going on strike unless we agreed to pay the redundancy, which they did because obviously we did not agree. Under the terms of employment they had with Ready Workforce at the time we did not have to pay the redundancy. That obviously went to the Commission and the hearing came out in early February in our favour. There were a few jurisdictional decisions based on that in that the NUW was not a party to the agreement on the site at the time. As such we redirected some of those 12 employees, once the site was fully closed, to other clients of ours as well.

The CHAIR — Thank you for that background, Rob. I have a couple of questions to start off with. Firstly, is Ready Workforce a member of the Recruiting and Consulting Services Association?

Mr SONOGAN — Correct.

The CHAIR — I am interested in the OHS systems at work. One of the things that intrigued me — and you might have heard me say this to the last group of witnesses — is that we are talking about a sector for which there is what I think is persuasive evidence — we have had some discussion about whether it stands up to scrutiny — that the labour hire sector has an injury rate that typically is higher than permanent or in-house employment.

Mr SONOGAN — Correct.

The CHAIR — We are dealing with a sector in which there does not seem to be a standard arrangement for managing OHS insofar as site assessments, induction of employees into different workplaces and all that sort of thing. Can you give us an overview as to what your company typically would do with an employee before it sends that person out to a site?

Mr SONOGAN — Absolutely. With any employee wanting to register as a casual employee the induction starts immediately. We take all employees through a video-active OHS test, and they must score 29 out of 32 on that test to be able to proceed to the next phase. It is a good test in the way that it covers four separate areas of OHS. It starts making people aware of what they are going to get on the site. The test itself is called Big Four, and it is renowned. We bought it from the video company that produced it. The details of that test are then kept on file.

We also take people through an induction on site where a consultant from Ready Workforce takes people on site and physically takes them through an induction. Certainly in the case of Tottenham that occurred. We get them to sign off that they have had that induction. We maintain a copy and the client maintains a copy. Depending on what the site-specific arrangements are, that induction may cover things like manual handling, machine operating, dos and don'ts — for example, where the emergency stop is. We go through quite an extensive arrangement. We look at simple things like, 'This is the car park. There is a light here. This is where you sign on'. It goes through quite a range of things.

At one site we have employed a full-time contractor to take our people through inductions. At various other sites the consultants do the induction themselves. They remove themselves from the office, meet five or six at a time down at the site and take the people through.

Prior to that, with any client who comes on board we conduct a risk assessment. We employ a risk manager for the state who goes out to sites and specifically does a risk assessment of that site. This person is qualified, for want of a better word, to go out and do that. That risk assessment comes back and then we base certain position descriptions and what have you based on that, and what to look for in the inductions as well. It all ties in with each other. The policy is quite good in that it is extensive and covers a lot of areas. From the word go, when the candidate comes into the branch there is quite a big component of OHS. That is in the general questioning as well, not just the video-active test.

When they are completing paperwork there are OHS questions involved in there. We look at their previous safety and injuries that they have had. We also employ a return-to-work coordinator, and the same person is a WorkCover administrator as well. So we are quite active in OHS within the company.

The CHAIR — What happens if in doing your assessments you conclude that a company is not up to scratch and you suspect that they are not interested in getting up to scratch? Do you say, 'We are not going to do business with you.'

Mr SONOGAN — It has happened, and we give the report to the company. We say, 'There are a couple of areas here that need some work'. Machine guarding is probably the biggest one that we come across. We try to work with the company to fix the problem. We give them a timeframe. We then go back and reassess; and if they have not fixed it, we do not supply.

The CHAIR — Are you under any obligation if they do not comply? You are under no obligation to report them as such.

Mr SONOGAN — Not at all.

The CHAIR — This is an area that concerns me because it seems that there is a fairly high incidence of labour hire companies encountering hosts who are not up to scratch and occasionally it would seem do not want to get up to scratch. We all say, 'Well, we are not going to provide the labour, so the situation is fine'. But the situation is not fine as long as they are not going to do the remedial work. That concerns me. I do not know if you have a comment on that.

Mr SONOGAN — I agree with what you are saying. There are a lot of labour hire companies that will not do a risk assessment on the site and will just supply for the sake of supplying. It is an economic benefit to them — if they are supplying labour, they are making money but without the concerns of OHS. On the other hand there are a lot that will not supply because of the structure of their company. We have been independently audited by WorkSafe Victoria, and we came up with no write-ups at all. We have a good administrative system on safety, and that certainly is reflected in the report that they ran.

The CHAIR — I wonder when we talk about registration systems whether people are looking at it slightly the wrong way. It may be that a requirement of a registration system as such ought be that labour hire firms, where they encounter companies which will not do the right thing — and we are talking about basic safety procedures and equipment in particular — but that they do report them and that they are obliged to report them. You do not have to comment on that. I am thinking out loud.

Mr SONOGAN — I read in the NUW submission that they are looking at licensing, and I totally agree. That is probably a good way to move forward. Certainly the rules and regulations of the licence certainly would help that move through. If you made it one of the regulations that you do report companies that are unsafe to WorkSafe as the organisation that certainly polices unsafe work practices, we would certainly agree with that.

Ms MORAND — I want to follow up on the NUW discussion. I realise it has gone to the Commission and that there has been an outcome, but just in terms of the principle — that is, that the George Weston Foods employees who were employed through Ready Workforce, they say that a number of them were employed full time over several years — is that the case?

Mr SONOGAN — Not exactly. The longest-serving member was for 7 years, not 10, which is in their submission. There was only one other that was for 4 years. All the rest were less than 6 or 12 months.

Ms MORAND — Between 7 and 12 years?

Mr SONOGAN — There was one with 7 years and one with 4, and the remainder had less than 12 months service.

Ms MORAND — And neither of those got any redundancy?

Mr SONOGAN — No.

Ms MORAND — And you agree with that?

Mr SONOGAN — Yes, they did not get a redundancy. Under the terms of our employment they sign a common law agreement with us, and they are employed on an assignment-by-assignment basis. The work out there certainly was not in any way permanent in that it was seasonal. They certainly had breaks through Christmas and other periods of the year when the client was quiet.

Ms MORAND — So they were not employed full time for 7 years?

Mr SONOGAN — Not full time, no. They were for periods of time, but their terms of employment were assignment by assignment. If we had the opportunity and they finished an assignment at George Weston Foods in Tottenham, we could certainly try to redeploy them elsewhere, which is the case now. Some of those employees are redeployed at other clients.

Ms MORAND — So with other people who have worked for you and who you might place somewhere permanently for 1 or 2 years, do you have a principle where there if they have worked for a certain time as a full-time employee that they are entitled to redundancy payments.

Mr SONOGAN — Yes, to go full time. With the CFMEU agreement that we have got at one client it is 12 months' service. At the end of 12 months' service through labour hire or casual within the company, that person has to be offered permanent employment — and we certainly adhere to that.

Ms MORAND — That is one of the positions put by several unions — that is, if a person is employed at a workplace permanently for I think one suggestion is 6 months, that they should be offered full-time employment rather than — —

Mr SONOGAN — I totally agree.

Ms MORAND — Do you agree with that?

Mr SONOGAN — Even after 3 months we encourage clients to take people on permanently. As such we do not charge them a fee beyond 3 months. We employ the person casually for 3 months. A good example is at Goodman Fielder in Clayton where we had drivers. They work for 3 months. These guys have permanent hours of 6 days a week for 3 months, and the client takes them on free of charge. We encourage that.

Ms MORAND — That is good. Thanks.

Mr PULLEN — I always worry about casual employees getting home loans. I have a document here from someone from the Australian Industry Group that says that I do not know what I am talking about because someone produces an affidavit saying that casual employees are treated exactly the same as a permanent full-time employee by lending institutions. That was mainly because they were employed by labour hire companies. So in this particular case — I just want an opinion on this — if these people were not employed by Weston Foods but were employed by you, being employed by you was not worth a bumper to them, was it?

Mr SONOGAN — It is to us, of course. The banks make their own decisions on their terms.

Mr PULLEN — But it is not worth a bumper to them. It conflicts with what they are saying in this document I have received. They say, 'It is just treated as normal because they work for a labour hire company'.

Mr SONOGAN — I cannot comment on what AIG has written in that statement.

Mr BOWDEN — It was suggested to us in a previous submission that one company uses casual labour hire as a pre-screening for intended or hopeful candidates with prospects for permanent employment. I personally think that is a good idea.

Mr SONOGAN — Absolutely.

Mr BOWDEN — But I would be interested to hear your thoughts or suggestions on whether or not some employers are using long-term casual labour hire mechanisms and arrangements as a way around their own responsibilities under occupational health and safety and/or equal opportunity regulations. Just to help your answer or to help your thoughts, there may be some difficult host employers who really do not want to be aware of or do not want to exercise their responsibilities under OHS or equal opportunity circumstances, and this may be a great way for them to off-load that onto a labour hire company. I would be very interested to have your thoughts on that concept.

Mr SONOGAN — I am sure there are companies out there that try to use labour hire as a buffer — they may have a high incidence of injuries on site — but I dare say the incidence would be quite minimal.

Mr BOWDEN — So it is small?

Mr SONOGAN — It would be quite small. We are dealing with professional large companies that we make a commercial arrangement with, and part of our commercial arrangement is that we will come out and do a risk assessment. The key to providing good service is to make sure that the workplace where you supply people is in fact safe. Obviously section 21 under the OHS Act states that an employee must have a safe workplace. If they cannot provide that, we cannot provide labour. In fact we come under that legislation as well: we must ensure that the workplace is safe. I really think there would be quite minimal occurrences where a company would use a labour hire company for the purpose of buffering their WorkCover responsibilities, for instance.

Mr BOWDEN — You regularly decline to supply labour when you are not comfortable with the quality of the host company?

Mr SONOGAN — Absolutely.

Mr BOWDEN — Thank you.

The CHAIR — ‘Hold harmless’ clauses have been mentioned to us. It has been said that some host employers will shop around and go to a labour hire firm and say, ‘We might give you the job, but you will indemnify us’. That is effectively what a ‘hold harmless’ clause is, I think?

Mr SONOGAN — Yes.

The CHAIR — You have been approached by companies in the past on that basis?

Mr SONOGAN — We have ‘hold harmless’ insurance.

The CHAIR — You have ‘hold harmless’ insurance?

Mr SONOGAN — Yes, and it is part of our terms that we send out to clients. If a client wishes to apply for ‘hold harmless’ insurance, they must write to our human resources (HR) manager, and we then have to approve that client’s application for ‘hold harmless’ insurance. It is not a given that we will give ‘hold harmless’ insurance to every client we go to. The decision about whether to provide the insurance would be dependent on the type of work that people are performing.

The CHAIR — In that circumstance where it is approved, you will offer them that insurance?

Mr SONOGAN — At a rate, yes.

The CHAIR — And that then means they will be reimbursed for any expense they suffer as a consequence of occupational health and safety difficulties or WorkCover claims?

Mr SONOGAN — Correct.

The CHAIR — I have a problem with that. Legitimising ‘hold harmless’ clauses seems to me to be a cheap way of buying out of your obligations. If we are all serious about OHS, if we are all saying we are responsible and if we all have this notion of joint responsibility and all of that and we all have to be more mindful of workplace injury and workplace safety, then even allowing for the fact that the insurance has to be asked for and approved, the capacity to buy out of that effectively seems to undermine the whole purpose of it. It seems to undermine the universal principle that we are all responsible for workplace safety.

Mr SONOGAN — Generally, but the labour hire company under section 21 still has to make sure that the workplace is safe. So it is a risk for the labour hire company to go out there, do a site inspection and ensure that the site is safe.

The CHAIR — But the principle should surely be that the host employer should remain responsible and should not be able to buy out of it — which is what they are effectively doing.

Mr SONOGAN — Under the legislation they could still get taken to court by the Victorian WorkCover Authority (VWA), and it certainly happens, but that is where the labour hire company will step in.

The CHAIR — But they are still buying out of it. I do not like that idea. Instinctively I reckon that is wrong. I understand it is a reality in the sector, because companies will do it, but I have a problem with it. It seems to be totally contrary to what we are on about — that everyone has to discharge a responsibility.

Mr SONOGAN — We certainly do not use it as a selling tool. It is an expensive tool to have as part of your make-up as a company. We are a company that has gone in seven years from zero to \$300 million, and ‘hold harmless’ insurance has certainly cost us some dollars in the past. We are affiliated with some industrial relations lawyers who can help us in that area, but as far as supplying ‘hold harmless’ insurance, it is at the client’s discretion whether they want to go with it or not. I understand what you are saying. It is a buy-out, but it is initially our employee who is on site and who is injured, and that is where we have the responsibility under section 21.

Ms MORAND — Can I just clarify that? Surely if a worker is injured at a host employer’s site, the VWA could prosecute the employer?

Mr SONOGAN — Both.

Ms MORAND — Both. So when you say you step in if they have ‘hold harmless’ insurance, how does that actually work?

Mr SONOGAN — I have limited knowledge on ‘hold harmless’ insurance, but when the client has the insurance it can approach us and say, ‘We wish to use the ‘hold harmless’ insurance that we have been paying for’. That is where we then take over the case, so to speak.

Ms MORAND — So you represent them in court?

Mr SONOGAN — Absolutely.

Ms MORAND — But you are not necessarily liable, because the court could find that the host employer was liable?

Mr SONOGAN — That is right. It is only as far as representation goes, which can be quite pricey by any means.

Ms MORAND — What is the premium for ‘hold harmless’ insurance?

Mr SONOGAN — It is \$100 000.

Ms MORAND — Per?

Mr SONOGAN — Per case. That is why we do not sell it.

Ms MORAND — When you say ‘per case’, do you mean per employee that you provide?

Mr SONOGAN — If the VWA chooses to prosecute a client and the client then chooses to start the ‘hold harmless’ process, it is \$100 000.

Ms MORAND — But what is the premium for company X that wants to have ‘hold harmless’ insurance with you?

Mr SONOGAN — It is based on an hourly rate. So with a casual we employ, there is obviously a casual loaded rate. Included in that is WorkCover, superannuation and then a ‘hold harmless’ premium. So we actually charge it out at an hourly rate.

Ms MORAND — What is it? That is what I am trying to get at. What sort of premium is it?

Mr SONOGAN — It is 4.4 per cent off your WorkCover rate.

Ms MORAND — So 4.4 per cent on top of the normal fee that would be charged?

Mr SONOGAN — Correct, yes.

The CHAIR — I am intrigued by this ‘hold harmless’ insurance, and I want to learn more about it. It is a standard product across the labour hire sector?

Mr SONOGAN — No, it is limited. Not every labour hire company will have ‘hold harmless’ insurance. It is very expensive insurance.

The CHAIR — But where they do, we are talking about more or less the same product?

Mr SONOGAN — Yes.

The CHAIR — Or is what you offer in ‘hold harmless’ insurance different from what another company offers?

Mr SONOGAN — Possibly, because we do not offer ‘hold harmless’ insurance in the aviation industry and we do not offer ‘hold harmless’ insurance for work in confined spaces. There are various sectors that we will supply it in. It is almost like a safeguard. For food processors, yes, the risk is quite low. For aviation, the risk is high. So we do a risk analysis for where we can supply and where we cannot supply.

The CHAIR — Does this involve an insurance broker as well?

Mr SONOGAN — Yes. Marsh is our insurance broker.

The CHAIR — This would be something that Marsh and others specialise in, I imagine?

Mr SONOGAN — Marsh certainly shops around for all our insurance and not just our ‘hold harmless’, but certainly for our WorkCover insurance and various other insurances. We use them as our broker for all insurances.

The CHAIR — And what typically are the companies that ask for ‘hold harmless’ insurance, or is there no typical company?

Mr SONOGAN — There is no real typical company. It is a broadly based term that we put in our terms and conditions. If they happen to choose to read the terms and conditions, for one, and see the section that says ‘If you wish to gain ‘hold harmless’ insurance you must apply in writing through our HR division’, then that is totally up to the client. But a client certainly will not come up to us and ask — although I know a couple have been mentioned. Baiada Poultry, for instance, is looking for a company with ‘hold harmless’ insurance. I am not sure whether the company now supplying it actually has ‘hold harmless’ insurance, but Baiada certainly went and did a bit of shopping. We just said, ‘It’s up to you. Here are our terms. You have a read of those’. We are not allowed to sell the product, from what I can gather. It is up to the client to read what our terms are and then apply for it.

The CHAIR — So it is not possible at law to offer it as a product?

Mr SONOGAN — My understanding is it is not, but I am not exactly 100 per cent sure.

The CHAIR — ‘As long as it is a thing we do not mention by name, that is okay; but if we come knocking under the table, that is all right’? It is all above board, I understand that. It just seems a strange one that we might have to learn a little bit more about.

Mr SONOGAN — Baiada is an example of where we supplied terms — and we certainly have ‘hold harmless’ insurance written in our terms — but we do not supply them. Through connections we knew they were looking for a company with ‘hold harmless’ insurance. That is why I am sure that the company they have on board now does not have ‘hold harmless’ insurance.

Mr BOWDEN — Several submissions and witnesses over several days have mentioned that their companies have experienced massive growth over the last decade. We have heard about this, but I would appreciate your perspective as a company in the business: what would you say to us are the drivers that are driving this growth? What is driving it, as you can see? Is there any factor or series of factors that are encouraging employers to embrace labour hire, casual labour, as opposed to the traditional permanent profile we have seen in past years, with particular emphasis on the blue-collar semi-skilled area, because that is very interesting? What is driving the growth of your company as you see it, if you are able to tell us?

Mr SONOGAN — We certainly fill gaps. That is really what the whole idea of labour hire is — to look at a company’s peaks and troughs. An example of that is Tip Top Bakeries, which does an Easter bun run. It starts in January and finishes in March. We supply the 20 people to do that Easter bun run for that period of time. Straight away there is a need, and we supply for that need. Certain EBAs and awards have provisions for labour hire.

At Don Smallgoods no more than 6 per cent of their staff is to be labour hire. We are in discussions all the time with those guys. That is another company that likes to offer employment to people after three months. A lot of companies use the try-before-they-buy scheme, as we were saying before and as I have just mentioned with the three months. The labour hire market picks up when they try that. But it is very difficult to read what your peaks and troughs are as a labour hire company, because you could have a good week in one week and the next week could be bad.

You were talking about companies that are growing. Take the example of Tip Top: their sales are obviously 20 per cent larger than they were six years ago. Larger sales means they are going to need a bigger infrastructure, and we certainly help them out by supplying them with labour. When companies like that grow, we grow with them.

Mr BOWDEN — Do you think the concept in manufacturing of just-in-time, which usually relates to materials and componentry, has been extended through the labour hire industry into labour itself?

Mr SONOGAN — No.

Mr BOWDEN — Thank you.

The CHAIR — I had another question, and I am conscious of the time. We need to finish shortly. One of the submissions made to us — there might have been a couple — by one of the unions talked about training. They might have been flying a kite here, but they suggested there should be mandated training arrangements for labour hire employees, particularly longer-term labour hire employees, on the basis of — and I might have this wrong — one day every three months or something like that being mandated for training. I am interested in that, because if we accept — and the committee may accept — that, yes, there is an OHS issue and there is an injury rate issue that we have to look at, then getting safety training in place might be a valid way of dealing with that.

How would that affect a company like Ready Workforce, if there was a requirement at state level starting in a year or two that for every employee who worked the equivalent of three months full time there had to be a day provided for safety training?

Mr SONOGAN — We would be all for that. That would be fantastic. We actually have a division called Chandler Macleod Training, and we go out to various sites and train other site organisations. We train their people. An example of that is Pino Cold Storage. We have 100 trainees on our books, and we run them through right up to certificate III level of training. Coles Myer is another example where we go out and do retraining on forklift driving. Because the legislation moves every six months with forklift driving, we have full-time certificate IV trainers in the organisation who go out and do training at various other sites. Just last week another six of our people within Victoria became qualified to train in certificate IV, and they can now go out and train various people at sites. If that were part of a legislative movement, we would certainly back that up. That would be fantastic.

The CHAIR — I want to be clear that we understand what we are talking about here. I would be saying that labour hire companies would be required to do this for their employees and not anyone else's?

Mr SONOGAN — Yes, for sure. Absolutely. If our employees are on a site where forklifts are operating, they are involved in that training as well.

The CHAIR — That would be in addition to any standardised OHS system we put in place?

Mr SONOGAN — Absolutely, yes. The butcher-paper training is quite good. We have done that in the past where we have gone out to site, and certainly OHS has been the most talked about point during the day, plus discrimination and workplace harassment and various other issues. There are certain subjects that you cover on the day. You do not get long. We have various shifts — we operate 24 hours a day, seven days a week — so you are dealing with people at 3.00 a.m. and 3.00 p.m. If that is a move forward, we would certainly back that up.

The CHAIR — It is just something I am thinking about out loud, bearing in mind what has been said about training in one of the earlier submissions.

We are done. Thank you for that. It was very informative. We will make sure a copy of the transcript of the proceedings goes to you. There might be some follow-up questions. I might come back to you with one or two questions about 'hold harmless' insurance, to learn a bit more about that. We will make sure that a copy of our report which is due by the end of the year is sent out to you as well.

Committee adjourned.